And although this legislation merely sets a maximum, and the rate agreed upon is within it, it is submitted that the detailed provisions of the Interstate Commerce Act show the intent of Congress to allow no interference with rate-fixing except by its own regulations.[10] The carrier is commanded to file reasonable rates,[11] and a contract fixing those rates, or delegating their fixing to another, would seem to violate the spirit of the act. The lessor, it is true, could have fixed the rates had he not leased the road, but the lessee is now the carrier subject to the act.[12]

The situation of the railroad, then, may be precarious. If the charter only confers the right to charge rates fixed by the state, any other rates are *ultra vires* and render the charter forfeitable. If charging rates fixed by the state is a condition precedent to incorporation, the railroad never becomes incorporated. If this is a condition subsequent, however, the right of the state to forfeit the executed charter never arises. But the performance of the illegal condition may be such a substantial portion of the transaction that the whole transaction is void, and no corporation is created. Similarly in the case of a lease, if charging the state rates is a condition precedent, the term never vests; if a condition subsequent, the right to divest it never arises.[13] However, if the performance of the condition is so vital a portion of the consideration for the lease that its illegality renders the lease void, the lessor could recover the premises.[14]

CONSTRUCTIVE NOTICE OF THE CHARTER OF A CORPORATION. — The doctrine that one dealing with a corporation has constructive notice of the provisions of its charter has brought great confusion into the law of corporations. Probably no court rejects it entirely;[1] and yet no court dares to apply it without restriction. Although the English court has been the most consistent supporter of the doctrine,[2] an Australian court refused to follow it in a late case, where the *bonâ fide* purchaser of stock, marked "paid up," was not charged with notice of the articles of association[3] which showed that this stock was issued at less than par.[4] *In re*

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[10] See Southern R. Co. *v.* Reid, 222 U. S. 424, 438, 32 Sup. Ct. 140, 143.

[11] Section 1.

[12] See NOYES, INTERCORPORATE RELATIONS, 2 ed., § 230.

[13] 1 TAYLOR, LANDLORD AND TENANT, 9 ed., § 281.

[14] *Cf.* Berni *v.* Boyer, 90 Minn. 469, 97 N. W. 121; White *v.* Franklin Bank, 22 Pick. (Mass.) 181; Taylor *v.* Bowers, 1 Q. B. D. 291. See KEENER, QUASI-CONTRACTS, 259. The illegality here is clearly not of such a degree as to preclude any recognition of the transaction by the courts as a basis of rights.

[1] New York has perhaps departed as far as any court from the old notions of *ultra vires*. Bissell *v.* Michigan Southern & N. I. R. Co., 22 N. Y. 258. But see Adriance *v.* Roome, 52 Barb. (N. Y.) 399, 411. Also see 9 HARV. L. REV. 270.

[2] See East Anglian Rys. Co. *v.* Eastern Counties Ry. Co., 11 C. B. 775, 811; Ridley *v.* Plymouth, Stonehouse, and Devonport Grinding and Baking Co., 2 Exch. 711, 717.

[3] It might be argued that this case is distinguishable by treating the articles of association as similar to by-laws rather than to an American charter. See COOK, CORPORATIONS, § 725; Ashbury Ry. Carriage and Iron Co. *v.* Riche, L. R. 7 H. L. 653, 667. But the articles of association are registered with the memorandum of association and with the same formality. 8 EDW. 7, c. 69, § 15. Also see Ernest *v.* Nicholls, 6 H. L. 401, 419; Fountaine *v.* Carmarthen Ry. Co., L. R. 5 Eq. 316, 322.

[4] Probably the weight of authority treats stock-certificates as negotiable and thus

Victoria Silicate Brick Co., Ltd., [1912] Vict. L. R. 442. The English court also departed from its doctrine that constructive notice is equivalent to actual knowledge in holding an agent on a warranty of the capacity of the corporation on an extension of *Collen* v. *Wright*,[5] since if the outsider had notice of the charter there would be no deception.[6] In the United States the doctrine of constructive notice has brought similar anomalous results.[7]

The history of the doctrine will perhaps show the causes of the confusion. In the early days of corporations when charters were sparingly granted by public act and usually for a quasi-public purpose a charter was properly regarded as a very special privilege.[8] There was a grave doubt as to the corporation's having the power to do an *ultra vires* act — *i. e.*, an act unauthorized by its charter.[9] But at any rate it was to be most severely condemned and prevented by stringent measures. So the courts were ready to say that anyone dealt with a corporation at the peril of the transaction's being *ultra vires*. The court then framed the rule in the language of constructive notice and said that anyone dealing with the corporation was presumed to have notice of the act of incorporation.[10] That conception was hardly settled in the judicial mind before an extraordinary growth began. Incorporation was transformed from a privilege into a right. Myriad charters for entirely private purposes and for nearly any legal purpose were filed with the proper official under a general incorporation law. These charters, although filed in a public place, could not in any proper sense be called public laws; yet the courts still adhered to the old language of constructive notice of their contents. The doctrine has developed naturally. At no time was the change sufficiently violent to induce a change in the rule. Yet to-day it seems an anachronism.

If this analysis has been correct the modern court should look behind the old fiction and see if its reason still persists.[11] Do the interests of

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protects a *bonâ fide* purchaser. Steacy *v.* Little Rock and Ft. Smith R. Co., 5 Dill. (U. S.) 348; Young *v.* Erie Iron Co., 65 Mich. 111, 31 N. W. 814. *Contra*, Myers *v.* Seeley, 10 Nat. Bankr. Reg. 411. But by hypothesis in the principal case the purchaser could not be *bonâ fide* since he would know that he was dealing with an obligation of the corporation and so would have constructive notice of the articles. The situation is analogous to the issue of negotiable paper *ultra vires* when a *bonâ fide* purchaser recovers if it is merely the abuse of a limited power, since the charter would not show the violation; but he fails if the corporation has no power of issue whatever. Auerbach *v.* Le Sueur Mill Co., 28 Minn. 291, 9 N. W. 799; Root *v.* Wallace, 4 McLean (U. S.) 8. See 23 HARV. L. REV. 567.

[5] 7 E. & B. 301, 8 E. & B. 647.

[6] Richardson *v.* Williamson, L. R. 6 Q. B. 276. See NOTES, p. 542.

[7] See 24 HARV. L. REV. 539.

[8] See Pearce *v.* Madison and Indianapolis R. Co., 21 How. (U. S.) 441; ANGELL & AMES, CORPORATIONS, 11 ed., §§ 13, 60–66.

[9] Hood *v.* New York and New Haven R. Co., 22 Conn. 502; Franklin Co. *v.* Lewiston Institution for Savings, 68 Me. 43. But see 23 HARV. L. REV. 495.

[10] See cases cited under note 2, *supra*. This was an easy step from the old maxim "Everyone is presumed to know the law," which seems an unfortunate statement of the maxim "Ignorance of the law excuses no man."

[11] Constructive notice was never a reason but a method of stating a result. Yet in 1890 the Supreme Court gave it as one of the three reasons for its doctrine of *ultra vires*. Central Transportation Co. *v.* Pullman's Palace Car Co., 139 U. S. 24, 11 Sup. Ct. 489.

the state or of third parties require that in regard to their respective rights in the particular case strangers should deal with corporations at the peril of the transaction's being *ultra vires?* This view would make it clear that constructive notice is not, like actual knowledge, a reason in itself for defeating an otherwise innocent stranger and would avoid the mental entanglement inevitably involved in attributing constructive notice of the charter to an outsider in order to postpone him to *intra vires* creditors, and yet in the same transaction treating him as innocent in order to prefer him to the stockholders.[12] By imposing, whenever public policy demands, duties [13] to look out for the state's interest in such cases as banking transactions, or the interest of *intra vires* creditors,[14] and by applying the common-law rules as to limitations on the authority of an agent,[15] the just results of the constructive notice doctrine are obtained without its misapplications, or the sacrifice of logic. The term "constructive notice" may have had a legitimate meaning in this branch of the law, but it would now seem wiser to abandon it in the interest of clarity of thought.

THE LIABILITY OF AN AGENT OF A CORPORATION FOR ITS ULTRA VIRES CONTRACTS. — If an agent, at the request of the proper officers of a corporation, makes a contract for the corporation which is beyond its powers and upon which it cannot be held, the authorities are divided as to whether or not the outsider can hold the agent personally responsible for any loss that may result.[1] The only basis for holding the agent, in the absence of a conscious misrepresentation, is upon an implied warranty either of his own authority or the capacity of his principal.

It is sometimes said that a corporation cannot have an agent to do an

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[12] See *In re* Birkbeck Permanent Benefit Building Society, [1912] 2 Ch. 183. This case probably represents the climax in the application of constructive notice. A company with 250 shares distributed largely among the directors did an enormous *ultra vires* banking business extending over fifty years. It failed with deposits totaling £16,000,000. *Intra vires* creditors were justly enough paid first. The shareholders then received the par value of their shares and the depositors were allowed the balance although the court confessed it was illogical to allow them anything.

[13] Concerning duty as the basis of complaint of *ultra vires* acts, see Belcher Sugar Refining Co. *v.* St. Louis Grain Elevator Co., 101 Mo. 192, 209, 13 S. W. 822, 827.

[14] See 23 HARV. L. REV. 495.

[15] The cases often seize on constructive notice of the charter to explain the failure of a contract because of a limitation on an agent's authority, but the common-law rules of agency would seem to cover most of the cases. See Ernest *v.* Nicholls, *supra;* Fountaine *v.* Carmarthen Ry. Co., *supra.*

[1] The authorities divide about evenly upon this point. The following cases hold the agent liable: Seeberger *v.* McCormick, 178 Ill. 404, 53 N. E. 340; Trust Co. *v.* Floyd, 47 Oh. St. 525, 26 N. E. 110; Small *v.* Elliott, 12 S. D. 570, 82 N. W. 92; Lasher *v.* Stimson, 145 Pa. St. 30, 23 Atl. 552. See Vliet *v.* Simanton, 63 N. J. L. 458, 468, 43 Atl. 738. The following cases hold that the agent is not liable to the outsider: Thilmany *v.* Iowa Paper Bag Co., 108 Ia. 357, 79 N. W. 261; Sandford *v.* McArthur, 18 B. Mon. (Ky.) 411; Humphrey *v.* Jones, 71 Mo. 62; Abeles *v.* Cochran, 22 Kan. 405.

The liability of directors of a corporation is a different question. It seems just that they should be charged with the duty of knowing the extent of the powers of the corporation, and if an outsider cannot hold the corporation on a contract which the directors have induced him to make, he should be allowed to hold them.